

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 494 of 1994

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For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No
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Parties in CRA No.494 of 1994

STATE OF GUJARAT

Versus

BHURUBHAI N RANA

Parties in CRA No. 495 of 1994

STATE OF GUJARAT

Versus

Jagdishbhai Arjanbhai Ahir

Parties in CRA No. 496 of 1994

STATE OF GUJARAT

Versus

Panchvati Corporation

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Appearance

Mr. Kamal Mehta, AGP for Petitioners

Mr. B.R. Kyada for Respondent No.1

Respondent No.2 served

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 29/07/97

ORAL COMMON JUDGEMENT

1. The State of Gujarat and the Collector, Surendranagar being original defendants in Civil Suit No. 291 of 1993 to 293 of 1993 are aggrieved by the judgment and order passed by Extra Assistant Judge, Surendranagar, in Civil Misc. Appeal No. 10 to 12 of 1994 dated 25th of February, 1994, and have moved this court under Section 115 of the Code of Civil Procedure for quashing and setting aside the order passed by the Extra Assistant Judge, Surendranagar, whereby he allowed the three Civil Misc. Appeals and quashed and set aside the orders passed by the trial court vacating the ad interim injunction from 13th January, 1994 below Exhibit-8 in the aforesaid suits, who was, however, conscious enough to direct the respondents defendants to maintain status quo as regards the suit premises till the disposal of the suit.

2. In order to appreciate the controversy between the parties, which has given rise to the present proceedings, it will be necessary to set out briefly the relevant facts which are common in all the three proceedings.

(i) The respondent No.1 in each Civil Revision Application is the original plaintiff who wanted to construct a shopping centre at Surendranagar Vadhwan Road and each one of them therefore applied on 26th October, 1990 along with the plan to the Chief Officer of Surendranagar Joint Municipality for approval of the plan and for permission to construct in accordance with the plan.

(ii) It appears that the Chief Officer of the Municipality found that the plans were defective and he insisted for submission of the revised plans which were submitted and on 16th April,

1991 the Chief Officer of the Municipality approved the revised plans.

- (iii) It appears that thereafter in the daily newspaper, a news item or a report appeared, inter alia, alleging that there were illegalities in the construction of the shopping centres. Based on the said report, the Collector of Surendranagar Mr. Vipul Mithra issued order of injunction-cum-showcause notice to each respondent No.1 herein on 21st September, 1993 and such notices were also issued against the occupants of the premises illegally constructed. The notice appears to have been issued by Mr. Vipul Mithra, Collector, Surendranagar District, wherein in the preface thereof it was inter alia stated that the Chief Officer of the Surendranagar Municipality has approved the plans of construction for basement and ground floor and thereafter on 16th April, 1991, on production of the revised plans, the plans of the first floor and the second floor are also approved. The Collector, however, found that the aforesaid plans of construction were against the provisions of the Town Planning Scheme and the Rules as well as Section 155 of the Gujarat Municipalities Act, 1963 and, therefore, he pointed out the defects in the plans and also granted injunction against further construction. The defects which he has pointed out in the plans were 11 in number and it was mainly pointed out that since the land in question is included in the industrial zone, as per approved rules, permission for construction of shopping centres can be granted only in the plots of land admeasuring 1000 sq. meters and not in smaller plots while on the facts of the case he found that the permission to construct the shopping centre was granted on the plot of land which was 332.74 sq. meters and thus, there was clearly breach of the rules. He also pointed out that for commercial purposes, FSI is permissible upto 1.3 while FSI utilised was for 2.4 and, therefore, plans were not liable to be granted. He also pointed out that under the rules, margin land is required to be kept on all the four sides of the shopping centre and margin which was liable to be kept open in meters in front portion 4.15, in the back portion in three meters and on either side three meters as against which in the plans, the margin was shown as 2.74 in the front portion, 3.05 at the back portion

and no margin was left on rest of the two sides and thus margin land which was required to be kept open was not kept open. It was also pointed out that no provision for parking was made. In view of as many as 11 objections, he issued the show cause notice as to why the approved plans of construction should not be cancelled and he also issued injunction against further construction.

(iv) It appears that against such show cause notice and an order of injunction, the respondent No.1 in each Civil Revision Application filed reply on 4th of October, 1993 and 7th of December, 1993.

(v) Prior thereto, the Collector, got prepared a panchnama regarding construction already made on 24th March, 1992.

(vi) After hearing the parties, the Collector passed the order on 13th of December, 1993, whereby he found that though the Chief Officer has approved the plans of construction as well as the revised plans, the permission or approval to the plans could not be granted in view of Section 155 of the Gujarat Panchayats Act, 1963 as well as in view of the Gujarat Town Planning and Urban Development Act, 1976 more particularly Section 29 thereof. He found that the two objections to be vital, namely, that permission for shopping centres can be granted only if the plot is 1,000 sq. meters in area and secondly the plans for construction are approved by the Town Planning Committee in accordance with law and since the plans were illegally and irregularly approved, the said construction which was already over, was liable to be demolished and the land was required to be restored in its original condition and he accordingly directed the Surendranagar Municipality to take action and to remove the illegal construction in accordance with law. Such order was passed by the Collector, Surendranagar District on 13th December, 1993 and thereupon the respondent No.1 in each Civil Revision Application instituted the aforesaid regular civil suits in the court of Civil Judge, Senior Division and applied for injunction and on such application, initially ex parte injunction was granted on 16th December, 1993 and the present petitioners filed their reply on 18th December, 1993 and thereafter the trial court by

judgment and order dated 1st of March, 1994, vacated the ad interim injunction which was initially granted.

3. It appears that each plaintiff thereupon filed Civil Misc. Appeal being No. 10 to 12 of 1984 before Extra Assistant Judge, Surendranagar, who by common judgment and order dated 25th of February, 1994 allowed the appeals and quashed and set aside the orders passed by the trial court. It is pertinent to note that on the question as to whom the hardships will be caused and in whose favour the balance of convenience was there, the Extra Assistant Judge in para - 22 made following pertinent observations which in my opinion, are absolutely unassailable.

"So far as question of balance of convenience is concerned, it is quite apparent that the building constructed by the plaintiff has been in existence since early 1992. Neither the Collector nor the Municipality can be said to suffer in any manner, if the building is allowed to remain in existence during the trial of the suit. On the other hand, if the building is allowed to be demolished as per the order of the Collector, it will render several persons out of business and would cause them loss and damage as a result of loss of livelihood. In that case, even if at the conclusion of the suit, monetary damages are awarded to the plaintiff and other persons affected by the demolition, that may not be able to compensate them for the immediate loss of livelihood. Besides, even if ultimately the court holds in favour of the plaintiff and awards damages, it would be very difficult and cumbersome for the plaintiff and others to recover the amount from the Government or the Municipality. In these circumstances, I am of the opinion that balance of convenience is in favour of the plaintiff and if the injunction is not granted, the plaintiff will suffer irreparable loss.

It is required to be clarified that the findings recorded in this order both on questions of law and facts are for purpose of deciding the application for injunction. Needless to say that the learned trial Judge would not be bound by the same at the time of final disposal of the suits."

4. Even on the question of prima facie case, he has raised a specific point of determination and found that there existed a prima facie case in favour of the plaintiff in each case. On such findings, he allowed the appeals and granted the injunction prayed for by each plaintiff. It appears that the construction as per the revised plans is already over and the persons are already allotted the possession of the shops in the shopping centre. At this stage, to call upon the plaintiffs to demolish such huge construction and to make the plot of land open, is in my opinion, not a permissible exercise of power especially when it would result into great waste of money as shopping centres are already constructed pursuant to the approval of the revised plans by the Chief Officer of Surendranagarpalika.

5. However, it is always open to the Collector to regularise such construction when the constructions are already put up and occupants have already taken over possession and have started their individual business. It is undoubtedly for the Collector to decide as to what amount each plaintiff should be directed to deposit for regularisation of the construction, which according to him was not legal, but this Court is directing the plaintiff of each suit to deposit Rs. 17,000/- (Rupees seventeen thousand only) in each suit in the Office of the Collector and the Collector is directed to consider the case of each plaintiff sympathetically in view of the fact that prima facie fault or blame cannot be laid at the doors of the plaintiff in each suit because they had already applied for permission to construct with plans and they have also submitted the revised plans as required and such revised plans were already approved and sanctioned by the Chief Officer of the Nagarpalika and thereafter they have started construction and put up construction. Their action, therefore, was not totally in violation of law and they have done everything which could be done in accordance with law within their power. However, if the Chief Officer of the Nagarpalika has not acted in accordance with law, the Collector may consider the request of each plaintiff to regularise their construction as large number of persons in the shopping centres would be affected adversely without even issuing any personal or individual notice to them and without affording an opportunity of being heard and without considering their explanation which they may render. In my opinion, the deposit of the aforesaid amount would be just and proper in the facts and circumstances of each case and the Collector would pass appropriate order so as not to be absolutely unreasonable, arbitrary, capricious

and whimsical.

6. In the result, each Civil Revision Application substantially fails subject to the aforesaid directions. The amount which is directed to be deposited, shall be deposited within a period of 15 days from today and Collector shall pass appropriate order thereafter after hearing the parties consistent with the observations made by this Court. Rule is discharged. Ad interim relief granted earlier by the learned Single Judge stands vacated. There shall be no order as to costs.

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